

Analysis of HB 4949

by the Michigan Unemployment Insurance Project*
September 10, 2013

Summary: As written HB 4949 does little to address the relatively minor problem of fraud in the distribution of benefits but will have a major harmful effect on a much larger segment of innocent unemployed families who are legitimately awarded benefits by the Agency or Administrative Law Judge and then have that award reversed on appeal.

Overpayments ≠ Fraud:

There is tendency to conflate overpayments and fraud. A small percentage of overpayments occur as a result of fraud. Overpayments include ALL circumstances in which people receive benefits to which it is later decided they are not eligible. The vast majority of overpayments are non-fraud in nature, meaning that the unemployed worker received the payments in good faith.

- ***Fraud Should be Kept in Context*** – In Michigan in a three year period ending in June 2012 only 10% of UI payments were overpayments. Only 2% of payments occurred as a result of fraud. This means that only 1/5 of the overpayments occurred because of fraud. The other 4 out of 5 cases involve reasons that do not involve fraudulent intent, such as a good faith dispute over the meaning of the law or misunderstanding about eligibility, employer error, or agency error. In these cases, the worker is found ineligible for such non-fraudulent reasons after initially having been paid benefits.
- ***Overpayments/Underpayments are an Inevitable Byproduct of the UI Adjudication System*** – The process for determining claimant eligibility for UI benefits is unique by public insurance programs. It is an adversarial and adjudicative process that for all its warts does it best at reaching a fair result but as a result is fairly hard to predict. The Agency does its best to apply the UI statute to the individual facts of each case and determine eligibility. But there are at least 4 different stages of review or “judges” that can review the facts and the law and offer their opinion on eligibility. As would be expected they don’t always agree. This makes it very hard for either party to predict with any certainty the final result in a case. It is unfair and punitive to force innocent claimants who filed their claims for benefits in good faith to repay benefits that they were legitimately awarded when that award is later reversed by a higher authority.

Impact on Innocent Claimants:

- ***Unintended Chilling Effect*** – This bill as written will have an unintended chilling effect on claimants who lose their job and then in good faith apply and are awarded benefits. With the prospect of having to pay back benefits as the result of an often confusing adjudication system many innocent jobless families desperately in need of the money will forgo either applying for or spending the benefits at a time when they and their families most need it.
- ***A Large Overpayment Debt Can Show Up on a Claimants Credit Report and Can Prevent them from Securing New Employment.*** More and more employers are seeking credit reports on job candidates and some are declining to offer jobs based on a checkered credit history.

Judicial Input on this Issue:

Judges in Houghton, Ingham, Macomb, Oakland and Wayne counties have all found that it is patently unfair and overly punitive to force innocent claimants who filed their claims for benefits in good faith to repay benefits that they were legitimately awarded when that award is later reversed by a higher authority.

No Harm to Employers on this Issue:

When a claimant's eligibility is reversed and they found ineligible any payment they received is removed as a charge against the Employer's tax liability and the Employer is held harmless.

* The Michigan Unemployment Insurance Project is a non-partisan, non-profit law firm that works with law students at Michigan law schools to provide assistance to Unemployment Insurance claimants. For more information, please contact:

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